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Joshua L Dorosin 09/06/2006 06:13:59 PM From DB/Inbox: Joshua L Dorosin

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TELEGRAM

September 06, 2006

To: ALL DIPLOMATIC AND CONSULAR POSTS - NIACT IMMEDIATE  
Origin: L  
From: SECSTATE WASHDC (STATE 146996 - NIACT IMMEDIATE)  
TAGS: PHUM, PREL  
Captions: None  
Subject: PRESIDENTIAL SPEECH ON DETAINEES IN THE WAR ON TERROR  
Ref: None

1. (U) This is an action request. Please see paragraph 6.
2. (U) On September 6, President Bush delivered a major speech addressing the issue of detainees in the war on terrorism. In his remarks, the President announced that 14 leaders and operatives of al Qaeda have been moved from classified locations, where they were being held and questioned by CIA, to DOD custody where they can be brought to justice for their crimes. The ICRC has been notified and will have access to them at Guantanamo. No detainees remain in CIA custody. This group included those believed to have orchestrated the 9/11 attacks and the attack on the U.S.S. Cole, and those believed to have been involved in the bombings of our embassies in East Africa.
3. (U) The President explained that we are working with the U.S. Congress on legislation that we hope will soon allow us to bring these individuals to trial before military commissions. He described the need after September 11 to take the offensive to deny terrorists safe haven and kill or capture al Qaeda members; explained the CIA program created after September 11 to detain and interrogate the most dangerous terrorists captured by the United States during the ongoing armed conflict with al Qaeda, who had unparalleled knowledge about terrorist networks and their plans for new attacks; and demonstrated the critical ways that this program has thwarted further attacks both at home and abroad. He reiterated that he hopes eventually to close Guantanamo, and called on other countries to work with us toward this end, urging nations to take back their nationals at Guantanamo who will not be prosecuted by military commission. He emphasized that we are a nation of laws and that we will continue to work with the international community to construct a common foundation to defend our nations and protect our freedoms.
4. (U) In tandem with the President's speech, the Department of Defense today issued two significant new detainee-related instruments: a new Directive on detention

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standards and a new Field Manual on interrogation. DOD issued the Directive and Field Manual after a comprehensive review to ensure consistency with U.S. and international law, including the Supreme Court's decision in the Hamdan case. By law, DOD personnel are only permitted to use those interrogation techniques listed in the new Field Manual, the contents of which are entirely public.

5. (U) The President's speech, draft military commission legislation, and new DOD detention policies represent a major new initiative on U.S. detention policy. With these announcements, the Administration intends to work with the Congress on new military commission legislation and to consult on this and other new programs to ensure that the CIA can continue to play a vital role in collecting intelligence about new attack plans, newly-developed capabilities, and members of terrorist organizations. This initiative also creates an opportunity to further U.S. diplomatic efforts to explain U.S. detention policies, seek consensus on the need to recognize the unique challenges created by the war on terrorism, and develop a comprehensive and durable framework for the conduct of this conflict into the future.

6. (U) ACTION REQUEST: Drawing from the points below, posts are directed immediately to engage with host governments and local media to pursue this initiative at all levels. Para 7 contains public diplomacy themes. Para 8 contains talking points. Para 9 contains selected questions and answers. In addition to these talking points, posts should review and draw as necessary from the full text of the President's speech (available at the White House website).

## 7. (U) PUBLIC DIPLOMACY THEMES

-- In a major speech today the President announced that 14 leaders and operatives of al Qaeda have been moved from classified locations, where they were being held and questioned by CIA, to DOD custody where they can be brought to justice for their crimes. This group included those believed to have orchestrated the 9/11 attacks and the attack on the U.S.S. Cole, and those believed to have been involved in the bombings of our embassies in East Africa.

-- The ICRC has been notified and will have access to them at Guantanamo. No detainees remain in CIA custody.

-- After the September 11 attacks, we took the offensive to deny terrorists safe haven and kill or capture al Qaeda operatives. We had many successes, some publicly known, some not.

-- Information from captured terrorists is one of the most vital tools we have to stop new attacks. Information from captured terrorists has saved lives in the United States and overseas.

-- We created a program, run by the CIA, to focus on a small number of the most dangerous terrorists and operatives, many of whom we believed knew the terrorists' secrets about potential attacks -- secrets that would help us save innocent lives.

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-- The CIA program for detaining and questioning these high-value terrorists has been conducted professionally and effectively. The Department of Justice reviewed the conditions of confinement and the questioning procedures and advised that the program complied with the U.S. constitution, laws, and treaty obligations.

-- The Supreme Court, in June in the Hamdan case, held that military commissions to try these terrorist for their offenses against the laws of war could not go forward without additional legislation. The Court also held that Common Article Three of the Geneva Conventions applies to the US war against al Qaida.

-- Common Article 3 of the Geneva Conventions describes in vague and undefined terms now the US should treat captured terrorists, leaving US personnel uncertain on where the law draws the line.

-- Accordingly, the President has sent legislation to Congress to (1) make clear the standards for questioning of captured terrorists so that US personnel can effectively and lawfully obtain the intelligence we need from terrorists, and (2) authorize the creation of military commissions as an effective and fair means to try terrorists for their crimes.

-- This is part of the Administration's broader effort to work with Congress to obtain additional authorization for the tools this and any future Administration will need to fight and win the war on terror.

-- The President has made clear that the United States will move toward the day when the United State can close the detention facility at Guantanamo Bay. America has no desire to be the world's jailer.

-- We are engaged in a global struggle -- and the entire civilized world has a stake in its outcome. America is a nation of law. As the Administration works with Congress to strengthen and clarify our laws at home, the United States will continue to work with members of the international community who have been our partners in this struggle.

-- One critical area of discussion is the need for a durable and effective framework for the detention and interrogation of those captured during this conflict.

-- We believe that the our laws and policies, together with the legislation proposed by the President, provide a comprehensive and durable legal framework for the interrogation and treatment of detainees in these kinds of conflicts.

-- This comprehensive framework is fully consistent with U.S. domestic and international law requirements. Indeed, this framework is more than consistent with Common Article 3 of the Geneva Conventions.

-- We are ready to work with our partners around the world to construct a common foundation to defend our nations and protect our freedoms.

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### 8. (U) TALKING POINTS

#### ----- Key Elements of President's Speech -----

- On September 6, President Bush delivered a major speech addressing the issue of detainees in the war on terrorism.
- In his remarks, the President:
  - announced that 14 leaders and operatives of al Qaeda have been moved from classified locations, where they were being held and questioned by the CIA, to DOD custody where they can be brought to justice for their crimes;
  - stated that the ICRC has been notified and will have access to them, and that no detainees remain in CIA custody;
  - explained the need after September 11 to take the offensive to deny terrorists safe haven and kill or capture al Qaeda members;
  - described the CIA program created after September 11 to detain and interrogate the most dangerous terrorists captured by the United States during the ongoing armed conflict with al Qaeda, who had unparalleled knowledge about terrorist networks and their plans for new attacks; and
  - demonstrated the critical ways that this program has thwarted further attacks both at home and abroad.
- This program has been focused on a very small number of the most dangerous terrorists.
- The President indicated that we will consult with Congress on this and other programs to help us gather vital intelligence to prevent terror attacks.
- The President also indicated that the Administration has provided the Congress with draft military commission legislation, and called upon the Congress to act quickly on that legislation in order to develop new military commissions consistent with the Supreme Court's decision in the Hamdan case.
- The President also laid out key facts regarding Guantanamo Bay and its future. He described how approximately 315 of approximately 760 detainees have been returned to other countries, and asked other countries to work with us to transfer out as many of the remaining detainees as possible in order to eventually close Guantanamo.
- The President emphasized that we are a nation of laws and will continue to work with the international community to construct a common foundation to defend our nations and protect our freedoms.

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### Review of U.S. Positions

- We recognize that the international community has not always agreed with U.S. positions in the war on terror.
- We believe that we are in a state of armed conflict with al Qaeda, the Taliban, and their affiliates following the attacks of September 11, on the U.S.S. Cole, and on our embassies in East Africa.
- In our armed conflict with al Qaeda, the Taliban, and their affiliates, it is the law of war that applies.
- These individuals have been determined to be unlawful enemy combatants who are not entitled to prisoner of war status. As in other conflicts, under the law of war they may be detained until the end of hostilities.

### Treatment of CIA Detainees Transferred to Guantanamo

- The President has now announced the transfer of 14 individuals from the CIA to DOD custody at Guantanamo for possible prosecution by military commissions, and that no detainees remain in this CIA program.
- This disclosure reflects the President's intention to bring these individuals to justice.
- The President carefully has considered what aspects of the program may be disclosed, consistent with national security. We are not confirming, among other things, site locations, interrogation techniques, or total numbers of individuals who may have been detained in this program, as these are operational details that would provide valuable information to al Qaeda and could have an adverse impact on the effectiveness of CIA's future operations.
- The detainees transferred include Khalid Sheikh Mohammed ("KSM") and Abu Zubaydah, two of the most notorious members of al Qaeda.
- Interrogations of the 14 individuals have yielded vital intelligence that we have shared with our allies, and stopped numerous plots, including in Karachi, Heathrow Airport and the Canary Wharf in London, and in the United States.
- At Guantanamo, these individuals will receive the same standard of treatment as all other detainees at Guantanamo.
- The ICRC will be allowed to visit these individuals. We are in contact with the ICRC on this issue.
- These detainees will appear before a combatant status review tribunal to confirm that they are properly held as enemy combatants in accordance with the same standards that govern all other DOD detainees at Guantanamo.
- These detainees will have access to counsel, will be

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afforded the opportunity to worship, and will be able to write and receive mail from their families and friends, to the same extent as other detainees in DOD custody.

-- All requests by foreign officials to meet with these detainees will be considered using the existing DOD policy on foreign government access to Guantanamo detainees.

-- These individuals will be housed in a separate high-security facility for security reasons.

## ----- Military Commission Legislation -----

-- The President announced that the Administration has submitted draft legislation to create a strong and effective military commission structure.

-- In the wake of the Supreme Court decision in the Hamdan case, we are working with Congress to create a process for prosecuting unlawful enemy combatants that ensures terrorists can be brought to justice; recognizes the nature of the enemy and the battlefield; protects our national security interests; and provides the accused a full and fair trial.

-- This legislation is the product of close consultation with members of Congress and with military lawyers in all branches of the armed services.

-- This legislation clarifies application of Common Article 3 of the Geneva Conventions to our conflict with al Qaeda.

-- The vagueness of some terms in Common Article 3 makes them susceptible to uncertain and unpredictable application.

-- The President has asked Congress to make these ambiguous terms clear to provide guidance to our personnel. The bill also amends the War Crimes Act to eliminate the vague terms while still criminalizing the most serious violations of Common Article 3.

-- The Administration looks forward to continuing to work with Congress to ensure that we have the necessary tools to question and prosecute terrorists, and that the men and women on the front lines in the war on terror have clear rules that are defined in law as they work to protect us.

BEGIN NOTE: Posts should be aware that there will likely be particular interest in the Administration's proposal to interpret vague elements of Common Article 3 by equating the detention standards contained in Common Article 3 with the standards of the Detainee Treatment Act and by amending the War Crimes Act to criminalize the most serious violations of Common Article 3. END NOTE

## ----- A Durable Framework for Detention -----

-- The President has expressed his desire to work with members of the international community who have been

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partners in this long struggle.

-- One critical area of discussion is the need for a durable and effective framework for the detention and interrogation of those captured during this conflict.

-- We have learned that while the traditional rules and procedures of criminal justice are vital, they are not always sufficient to deal with this type of enemy. The law of war is an appropriate body of law to confront the threat posed by an organized enemy with global reach and an ability to inflict mass casualties.

-- As a matter of international law, these terrorists are unlawful enemy combatants to whom the law of war applies. In the Hamdan case, the U.S. Supreme Court recently confirmed that the law of war applies, when it ruled that Common Article 3 of the Geneva Conventions applies to our conflict with al Qaeda.

-- We recognize that detention in the war on terror has been controversial, but over the last five years we have made numerous changes to our policies and to the legal framework governing these policies.

-- In addition to the military commission legislation announced by the President, Congress in 2005 enacted the Detainee Treatment Act, and our Defense Department has now issued a new Field Manual and Detention Directive to provide clear rules for the detention and interrogation of all individuals detained by the Department of Defense.

-- We believe that these laws and policies, together with our proposed legislation, provide a comprehensive and durable legal framework for the interrogation and treatment of detainees in conflicts such as our continuing conflict with al Qaeda.

-- This comprehensive framework is fully consistent with U.S. domestic and international law requirements. Indeed, this framework is more than consistent with Common Article 3 of the Geneva Conventions -- the proposed legislation and new DOD policies also exceed the minimum protections in Common Article 3 in significant ways.

-- We are ready to work with our partners around the world to construct a common foundation to defend our nations and protect our freedoms.

9. (U) QUESTIONS AND ANSWERS: The following questions and answers have been selected from a more comprehensive set of questions and answers because they are the most likely questions to be asked of U.S. officials:

QUESTION: why is this program being disclosed now? why is it being decided to bring these detainees to GTMO now, after all this time, and disclose that we have them?

ANSWER:

-- We have long intended to disclose our detention of these terrorists at the appropriate time, when consistent with

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national security.

-- Most of the intelligence value of these detainees has at this time been exhausted.

-- The President decided that it is important if possible to prosecute these key terrorist leaders and operatives for their crimes, and that military commissions are the best forum for doing that. We have been waiting for some time for a ruling from our courts resolving whether military commissions will be available for this purpose.

-- The Supreme Court's decision this summer in Hamdan did two things: it invalidated the existing military commissions and, by virtue of its holding that Common Article 3 of the Geneva Conventions applies in this context, it also imposed vague and undefined legal standards on military and intelligence operations regarding detainees in our conflict with al Qaeda.

-- In light of that decision, we are now asking that Congress both authorize military commissions to try these terrorists, and that they address the Common Article 3 issue in order to provide a clear legal framework for military and intelligence operations in our conflict with al Qaeda.

-- It is important that Congress and the public understand the importance of these issues to our national security as Congress considers how to address them.

-- Our Administration has worked in the last two months with members of Congress on how best to respond to the Hamdan decision, and today we submitted our proposed legislation. We want to work with Congress to enact a durable and sustainable framework for confronting the serious threat posed by international terrorism to our nation's security.

QUESTION: Did you tell the countries who had secret prisons that the U.S. would make this announcement? How did they react?

ANSWER:

-- Few tools are more critical to our ability to fight and win the war against al Qaeda and its affiliates than the close intelligence relationships the United States maintains with states allied with us in this war. Many countries take great risks in order to help us, and do so with the explicit agreement that the work they do will remain secret. We will not discuss these relationships, except to say that we could not achieve our successes alone and we are grateful to those who have helped.

-- We have provided our allies information from this program and they have told us of its great value in helping prevent terrorist attacks in their own countries.

QUESTION: How many detainees remain in this program?

ANSWER:



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-- None. However, we expect that we will continue to capture key terrorist leaders and operatives in the future.

-- As in the past, we may need to detain such terrorists without disclosing their detention in exceptional circumstances. We will not comment in the future on whether we are holding detainees in this manner, or if so, how many are being held. If we were to answer such questions, the pattern of our answers over time could reveal information that would aid our terrorist enemies.

-- We do not expect that we would need to detain individuals for an extended period of time without notifying the ICRC, but we reserve the right to hold detainees without notice to the ICRC for as long as may be necessary.

-- We will continue to keep Congress informed as appropriate.

QUESTION: How many detainees have been in the program since its inception?

ANSWER:

-- Since the development of this program in mid-2002, fewer than 100 terrorist detainees have been held for detention and questioning in CIA's custody. The program was selective: it was designed only for a small number of the most dangerous terrorist leaders and operatives, many of whom were believed to know information of great intelligence value -- for example, on attack planning or al Qaeda's capabilities. CIA officers have captured or played a role in the capture, questioning, and transfer of many more terrorists since 9/11, but only a very few entered this program. The overwhelming majority of such captured terrorists were taken into detention by U.S. military or host country officials.

QUESTION: Why were the detainees held in secret facilities and not identified to the ICRC?

ANSWER:

-- These terrorists have been held under conditions that were deemed essential to learning information they knew about planned terror attacks, al Qaeda's senior leadership, and the enemy's current capabilities.

-- It is critical not to make the identities or locations of key terrorist leaders and operatives we capture immediately known, so as not to alert al Qaeda to their detention and allow al Qaeda to make adjustments to its plans. It has also been important to keep operational details of CIA's efforts, including its interrogation procedures, secret from al Qaeda, in order to preserve their effectiveness.

-- Maintaining secrecy and focusing all relevant intelligence on questioning a small number of the most dangerous terrorists enabled us to collect information that stopped terror attacks and saved the lives of thousands of Americans and foreign nationals.

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-- We place significant value on our relationship with the ICRC and on its work and rely heavily on the ICRC to ensure important protections for our personnel.

-- Our decisions here are not intended to devalue the important role of the ICRC. The Department of Justice made the determination that detention in this program was legal, and we determined that, in a small number of cases, it was necessary in order to obtain intelligence information from these individuals that was critical to protecting the United States and its allies from further terrorist attacks.

-- Providing the ICRC notice of and access to these terrorists is not legally required. Such notice and access is required under the Geneva Conventions only for POWs and protected persons.

-- Even though international law provides no such right, the United States has made clear that, as a matter of policy, it will provide ICRC access to al Qaeda and Taliban detainees to the maximum extent practicable, and such access has been denied only to a tiny fraction of such detainees.

QUESTION: What legal authority does CIA have to capture, detain, and question these terrorists?

ANSWER:

-- The authority derives from the U.S. Constitution, including the President's authority as Commander in Chief, and various statutes, including the September 18, 2001 Authorization for Use of Military Force and the National Security Act.

-- Exercise of this authority is also consistent with the law of war. Under the law of war, the United States may detain captured enemy combatants until the end of hostilities.

-- DOJ reviewed CIA's interrogation procedures, which were referred to it by CIA, and determined that they complied with the U.S. Constitution, applicable U.S. statutes, including the anti-torture statute, and applicable treaty obligations, including those in the Convention Against Torture (CAT). And of course the General Counsel of CIA also reviewed the procedures and determined that they were lawful.

QUESTION: Were the detainees provided basic human necessities during detention? What were their conditions of confinement like?

ANSWER:

-- Yes. Terrorists held by CIA have been provided with basic human necessities.

-- They have been held in humane conditions of confinement. We are not going to comment further on the conditions under which they were held.

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QUESTION: The media has reported that CIA has rendered more than 100 terrorists since 9-11, including some individuals who were picked up due to mistaken identity. Have all of these individuals been in the CIA program discussed by the President?

ANSWER:

-- Suggestions that we have rendered thousands or even hundreds of terrorists to secret sites are inaccurate. This program was selective: it was designed only for a small number of the most dangerous terrorist leaders and operatives, many of whom were believed to know information of great intelligence value -- for example, on attack planning or al Qaeda's capabilities. Most of the terrorists transported by the United States since September 11, 2001 were not part of the highly specialized CIA program disclosed today, but were transported to their home countries, or countries where they faced criminal charges, or to DoD for questioning and detention as enemy combatants.

-- We note that before we turn a terrorist over to a foreign government, where appropriate we obtain credible assurances that the country will take responsibility for ensuring that the individual will not pose a threat and will not be tortured.

QUESTION: How did you decide who to take into the program?

ANSWER:

-- This program was selective: it was designed only for a small number of the most dangerous terrorist leaders and operatives, many of whom were believed to know information of great intelligence value -- for example, on attack planning or al Qaeda's capabilities.

QUESTION: How many CIA detention sites exist and where are these sites?

ANSWER:

The number of sites and locations will not be disclosed. Providing locations of CIA's detention sites would put our allies at risk of terrorist retaliation and also betray relationships built on trust that are vital to winning the war against al Qaeda and its affiliates.

QUESTION: Why couldn't you detain them at GTMO? Wasn't it so that you could torture them?

ANSWER:

-- It was decided that it was important to keep this small, tightly controlled effort entirely separate from DoD's much larger detainee operations.

-- It is also critical not to make the identities of senior terrorists we capture immediately known, so as not to alert al Qaeda to their detention and allow al Qaeda to make adjustments to its plans. It has also been important to

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keep operational details of CIA's efforts, including its interrogation procedures and locations of its facilities, secret from al Qaeda, in order to preserve their effectiveness.

-- These operational requirements could not be met at GTMO.

-- The United States does not authorize torture. It is against U.S. law.

QUESTION: What interrogation techniques were used with these detainees?

ANSWER:

-- One of the reasons these interrogations have proved so successful is that terrorists do not know what the procedures are or what the limits are. Al Qaeda trains to resist U.S. interrogation procedures that are publicly revealed. We want our procedures to be clear to our interrogators. We don't want them to be clear to the terrorists. Therefore we will not identify or describe these procedures publicly.

-- However, I can assure you that the authorized procedures used in questioning detainees were determined to comply with applicable U.S. law, including U.S. treaty obligations. They were also deemed to be safe and effective and they were subjected to rigorous review to ensure safety of the detainee and professionalism. CIA personnel involved in interrogations receive hundreds of hours of professional training before they undertake this mission.

-- Providing further detailed information publicly about CIA questioning will aid our terrorist enemies, allowing them to develop and train in effective countermeasures - many terrorists are already trained to resist the procedures in the Army Field Manual - and unnecessarily degrade our ability to detect and disrupt terrorist attack plans.

QUESTION: What kind of intelligence can the CIA gather with this program that cannot be gathered by the military with the Army Field Manual techniques?

ANSWER:

-- The CIA gathered life-saving intelligence from captured terrorists who are the most dedicated to al Qaeda's cause and the least willing to share intelligence. Many of these terrorists had received interrogation resistance training and were familiar with the interrogation methods publicized in the U.S. Army Field Manual on Interrogations.

-- As a result of this program, these terrorists have given the United States a fuller, deeper, and more complete understanding of their organization. Dedicated members of the organization like these can provide unique insight into the extreme mindset and methods of the al Qaeda membership.

-- These terrorists have provided valuable, independently

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verified and corroborated intelligence on al-Qaeda and its terrorist allies, to include information on: members; financing; logistics; plots; communications; document forgery and criminal activities; travel routes and safe havens; and terrorist intentions to obtain and use chemical, biological, and nuclear devices in their attacks. Subsequent disruption of these components of al Qaeda's network has proved invaluable in weakening our enemy's ability to launch offensive operations.

-- Intelligence gathered by questioning detained terrorists has been used as lead information to guide further counterterrorist operations. It is a vital, irreplaceable piece of the intelligence puzzle, but we still seek to corroborate it through other sources to gauge its reliability.

QUESTION: How can you say that the act of waterboarding does not constitute torture or cruel treatment?

ANSWER:

-- We will not confirm, deny, or comment on procedures or alleged procedures, so as to preserve their effectiveness.  
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Buchwald4  
CarlsonMH2  
ConklinML2  
DASH  
Fowler3  
Grogan  
Haas3  
L/CA  
L/EAP  
L/LEI2  
L/WHA1  
Mallonektv4  
MitchellTM1  
RosandEA2  
Simonoff1  
SullivanDJ2  
Meront  
Hoffmanw4  
Johnson  
LHRR1  
Mallonektv2  
HookeKH1  
L/T  
L/T1  
Mallonektv5  
Mallonektv8  
Wynn Teel  
Mattler1  
L/PIL  
Mallonektv6  
L/Ethics1  
L/Ethics  
ACDA

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